



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 and Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 (“the 2016 Act”) and Rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 (“the 2017 Rules”)

Ref: FTS/HPC/EV/24/1116

Re: Property at Scottsburn Cottage, Urquhart, Elgin, IV30 8QT (“the Property”)

Parties:

Mrs Isabel Hendry, Bellimy, Urquhart, Elgin, IV30 8LW and Mr Michael Hendry, 9 Rose Avenue, Elgin, as Executors Nominated of the late James Hendry who died on 10 December 2022, IV30 1NT (“the Applicants”)

Grigor & Young LLP, 1 North Street, Elgin, IV30 1UA (“the Applicants’ Representative”)

Mr Stuart Ramsay and Mrs Natalie Ramsay, Scottsburn Cottage, Urquhart, Elgin, IV30 8QT (“the Respondent”)

Tribunal Members:

**Ms. Susanne L. M. Tanner K.C. (Legal Member)
Mr. Angus Lamont (Ordinary Member)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the tribunal”):

(1) was satisfied that Ground 1 in Schedule 3, Part 1 to the 2016 Act was established by the Applicant, in that on the day the tribunal considered the application for an eviction on its merits: the Applicants intend to sell the let Property for market value, or at least put it up for sale within three months of the Respondents ceasing to occupy it; and that it was reasonable to make an eviction order in the circumstances; and made an order for eviction in terms of Section 51 of the 2016 Act; and deferred the date of execution of the order to 24 October 2024.

(2) The decision of the tribunal was unanimous.

Statement of Reasons

Procedural Background

1. The Applicants' Representative made an application to the tribunal on 6 March 2024 in terms of Section 51 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act") and Rule 109 of the First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Regulations 2017 ("the 2017 Rules").
2. The Applicants' Representative provided the following documents in support of the Application:
 - 2.1. Evidence of planned sale;
 - 2.2. Copy Notice to Leave;
 - 2.3. Proof of service of Notice to leave;
 - 2.4. Copy Homelessness Notice to the Moray Council;
 - 2.5. Proof of receipt of Homelessness Notice;
 - 2.6. Copy Death Certificate;
 - 2.7. Copy redacted will to show executors; and
 - 2.8. Copy lease.
3. The tribunal's administration obtained a copy of the Title deeds for the Property.
4. On 2 April 2024, the application was accepted for determination and the tribunal sent letters of notification to all parties with the date, time and arrangements for joining the Case Management Discussion ("CMD") in relation to the Application on 25 July 2024 by teleconference at 1400h. The Application paperwork was personally served on the Respondents by Sheriff Officers. The Respondents were told that if they wished to submit written representations these should be sent to the tribunal by 5 July 2024.
5. Prior to the CMD, the Applicant's Representative submitted two inventories of documents, one within the timescale in the rules, with documents 1-11 and one which was acknowledged as being late, with documents 12 and 13.

CMD: 25 July 2024, 1400h, Teleconference

6. Mr Brash, solicitor from the Applicants' Representative, attended. He was accompanied by Ms Chisholm, a trainee solicitor.
7. Mr and Mrs Ramsay, the Respondents, attended.

8. I explained the nature and purpose of the CMD.

Preliminary matter – Applicants’ documents

9. Mr Brash raised a preliminary matter in relation to the second inventory of productions which he acknowledged was sent late with a covering letter to ask if those would be allowed late. Mr and Mrs Ramsay confirmed that they had received the documents and consented to those documents being added late. The tribunal agreed to the late lodging of the Applicants’ second inventory.

Submissions by Applicants’ Representative

10. Mr Brash made submissions in support of the application for eviction. He said that the need for this action arises out of the death of James Hendry. He owned Scottsburn Farm. Scottsburn Cottage is one of the farm buildings. Mr and Mrs Ramsay have a Private Residential Tenancy of Scottsburn Cottage. The Applicants’ position is that they have a ground for recovery of possession on the basis of the 2016 Act, Schedule 3, part 1, where the landlord is seeking to recover possession of the let property because it is needed for another purpose. The specific purpose is to sell the property on the open market within three months of the tenant seeking to occupy it. The Landlord accepts that they have to prove that they have correctly terminated the tenancy. The Landlord says that that is the case on the basis of the copy notices to leave (pro 2) with Proof of service (pro 5). There is also a requirement to make clear that there has been a s11 notice which has been done and receipt has been confirmed (pro 6 and pro 7). The lease itself was referred to (pro 8).

11. Mr Brash said that other factors which the applicants are seeking to prove is that in view of the death of James Hendry, the Applicants are those people who are entitled to have raised this action in terms of his will. The excerpt from his will has been produced (pro 4). The copy of death certificate has been lodged (pro 3).

12. Mr Brash submitted that if the tribunal accepts that the tenancy has been validly terminated a ground could apply. In his submission, the tribunal has to consider whether the landlord has produced sufficient evidence that they intend to market within three months of the tenants seeking to occupy the Property. He referred to productions showing the ongoing process. The sale of the Scottsburn Cottage would be part of a much larger whole, including farmhouse and land. A number of productions relate to the sale. There are emails between the executors and Galbraith, the estate agency company which will be marketing the farm (pro 1). For agricultural or rural properties, it is one of a small number of specialist estate agencies. Pros 9, 10 and 11, 12 and 13 show the position as up to date as possible.

There is now a contract signed for the marketing. His understanding is that the farmhouse is vacant. He said that Mr and Mrs Ramsay may be in a better position to know that. The Applicants' Representative is not trying to remove a tenant from that property. It was formerly occupied by one of the Hendry family. Mr and Mrs Ramsay's presence has not prevented the larger farm estate from being fully marketed. However, the landlord has produced the brochure that will form the sales particulars of the sale of the farm for Scotsburn Cottage (pro 13). In the claim form itself, the cottage is integral to the farm and has no independent access road of its own. Mr Brash said that this is another reason why it is felt to be essential that the recovery of possession of heritable property takes place. Trying to sell any property without complete vacant possession will affect the saleability and also the price that will be achieved. Given that the Applicant also has to satisfy the tribunal that it would be reasonable that would be one of the factors that the Applicants would rely on. In addition, where someone has died, it is often the case that heritable property will have to be sold to wind up estate.

Submissions by Respondents

13. Mr and Mrs Ramsay made submissions in response. They oppose the eviction application, or otherwise ask for more time before they have to remove from the Property. They accept that the Notice to Leave has been properly served and that the Applicants intend to sell within three months of them ceasing to occupy. Their opposition is on the basis that it is not reasonable to make the eviction order.
14. They said that they are having a problem finding suitable accommodation. They have lived in the property since November 2018. They have five children. Four have additional support needs and three of those four are also classed as disabled as a result of autism. They also have a one year old child. The four older children are educated in local schools and nurseries. The eldest is just moving into Milne High Schol. He had an enhanced transition due to his needs. That is 6 miles. He will get the bus. He will get a pupil support assistant for travel. Their next child is going into Primary 2. They are not in mainstream. They are in a Support for Learning unit attached to a school. They get picked up in a taxi and travel two miles to school. Their next child is 5 and has severe autism. They are going into Primary 1. They have done an enhanced transition to go into the school. They will not be in mainstream at all. They are also picked up in a private taxi and travel 2 miles to school. Their next child goes to Ladybird developmental group. It is 4 miles away and they taken in the car by Mr and Mrs Ramsay. Then they have a one year old baby.
15. There are four bedrooms in a cottage. Since the Notice to Leave was served, Mr and Mrs Ramsay have been looking for accommodation with the local authority,

social housing and private sector. Mrs Ramsay said that Moray Council have told the couple that they will not do anything until they are out of the Property and are classified as homeless. Mrs Ramsay said that they have applied for a couple of private rents but were not successful. Even then, those were rents that they were not really able to afford. Mrs Ramsay said that the local authority has not said that they would get increased priority if an eviction order is made. The council are aware of the hearing today. She said that they keep making them aware that no property is available for permanent, temporary or even homeless because of the size of the family and the areas that they need to be based in to keep our kids in school.

16. Mrs Ramsay said that they would like to move within the same area for schools, because the family has been through so much to get them into the schools and to get them to have the proper care that they need. She said that to have to move them would be a challenge because they are not mainstream children.

17. Mr and Mrs Ramsay said that additional time would assist them to find alternative accommodation. Houses are scarce for what they need. They would like the tribunal to consider a deferred period. They said that all this has come about, not through being awkward. They understand that things need to move on. They said that if they had somewhere to go they would leave. They were first made aware that the property would be sold in a verbal notice a year ago. They were told that he was thinking about sale and ideally to find somewhere within six months but they were told it would not be ready for sale for at least a year. It was a year past this month. They started looking then and someone at the agency told them about the eviction ban. They went to Citizen's Advice. They filled out forms there. They just kept saying sit and wait. Mr and Mrs Ramsay said that they want to be in a house. They have been looking constantly. The council is their very last resort.

18. They have not kept in touch with Citizen's Advice in terms of the this hearing. The local authority is aware that the hearing is taking place today and they have asked Mr and Mrs Ramsay to report back on the outcome. They were told that if the order was granted that they would be closer to being a homeless applicant but they said that the family will have to be a certain amount of days homeless. Mr and Mrs Ramsay said that as soon as this hearing is over they will be reporting back.

Further submissions by the Applicant's Representative

19. Mr Brash made additional submissions in relation to reasonableness. In relation to the attitude of the local authority, his understanding is that they will only act with any haste once there has been an order granted for recovery of possession. He suggested that if an order were to be made today but that was deferred for a longer period than 30 days it would still mean that the Council would treat that as a final

order and something which they would have to take notice of and find alternative accommodation for Mr and Mrs Ramsay. Mr Brash said that the client would be amenable to some sort of extension of the period before any warrant for eviction becomes enforceable. From the landlord's point of view, he suggested that if the period of 30 days were to be extended to 60 days or two months, then that kind of timeframe would not result in any particular hardship to the landlord at all, viewing these things in the round. It would allow for marketing, and agreement of sale. The Property is not actually yet on the market so he cannot say what the period of time would be for an offer and then a concluded contract.

20. In the more general sense of the reasonableness, Mr Brash submitted that:

20.1. It is considered to be quite normal where a person has died, that their heritable property will require to be sold to realise the estate. Generally that would optimally be vacant possession of the property

20.2. There is the issue of the size of the totality of the farm but as illustrated in the brochure (pro 13), there is a plan of the farm as a whole on the third last page. It would be a considerable problem to optimise the value of the whole if it had to be sold tenanted as opposed to be sold as part of the whole with vacant possession.

20.3. He hears and fully sympathises with the situation of Mr and Mrs Ramsay. He completely understands the difficulties if the council are not able to provide accommodation at a sensible distance. Were there to be the capacity to be rehoused in Elgin, Lambride or Fochabers, these would still be able to be reached. His understanding is that the ladybird group in Lossiemouth is for children from all over Moray.

Further submissions by Respondents

21. Mr Ramsay confirmed that the farmhouse has been derelict for 20-25 years.

22. He also said that there are two access roads to the farm and farmhouse and cottage and that if they were still living in the Property, it would have no effect on the actual farm due to access. There are two gates that separate the farm from the cottage. They do, however, accept that the Property is part of a farm estate.

23. The tribunal adjourned to consider the Application.

24. The tribunal makes the following findings-in-fact:

24.1. The Applicants are the Executors Nominated of the Late James Hendry who died on 10 December 2022, IV30 8LW.

24.2. The late James Hendry was the Proprietor of the Property.

- 24.3. There is a private residential tenancy agreement between the late proprietor and the Respondents for the Property which started on
- 24.4. On 1 September 2023, a Notice to Leave containing ground 1 of Schedule 3 to the 2016 Act was served on the Respondents.
- 24.5. The Applicants have given the Respondents at least 84 days' notice that they require possession.
- 24.6. The Application to the tribunal was made on 6 March 2024.
- 24.7. The Applicants intend to sell the Property on the open market or at least market it for sale within three months of vacant possession, to realise the deceased's estate.
- 24.8. The Property forms part of a larger property of Scottsburn farm.
- 24.9. The Respondents live in the property with five children, four of whom have additional support needs and three of whom are disabled. The three oldest children are taken by special transport or with assistance to schools which accommodate their additional support needs. The second youngest child is taken to a special nursery provision by the Respondents. The fifth child is a one year old baby.
- 24.10. The Property has four bedrooms.
- 24.11. The Respondents have so far been unable to find suitable replacement accommodation for the family. They are looking for local authority, social housing or private accommodation to meet their family's needs.
- 24.12. The Respondents' priority status for alternative accommodation is likely to be increased if the eviction order is made.

25. Findings in fact and law

- 25.1. The Applicants have title and interest to make the Application.
- 25.2. The tribunal is satisfied that the facts required in paragraph 1 of Schedule 3 to the 2016 Act have been established.

25.3. The tribunal is satisfied that it is reasonable to make an order for eviction but considers that it is reasonable to defer the date of execution of the order by an additional two months in addition to the statutory appeal period, to allow the Respondents and their family additional time to seek alternative accommodation.

Discussion

26. The order for eviction is sought in terms of Section 51 and paragraph 1 of Schedule 3 to the 2016 Act. The tribunal was satisfied that the requirements of those provisions have been met.

27. In relation to reasonableness, reference is made to the tribunal's findings in fact.

28. The tribunal was satisfied that it was reasonable to evict the Respondents in the circumstances of the case but considered that it was also reasonable to defer execution by an additional two months, in addition to the statutory appeal period. Execution will be deferred to 24 October 2024 at 12 noon.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

S. Tanner

25 July 2024

Legal Member/Chair